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CLIENT/MATTER NUMBER
042405-0100

September 7, 2005

VIA ELECTRONIC MAIL AND HAND DELIVERY

John Robertus
Executive Officer
Regional Water Quality Control Board
9174 Sky Park Court, Suite 100
San Diego, CA 92123

Re: Tentative Order No. R9-2005-0139; NPDES Permit No. CA0109215; Waste Discharge Requirements for the City of Escondido, Industrial Brine Collection System, Discharge to the Pacific Ocean via the San Elijo Ocean Outfall, San Diego County ("Tentative Order")

Dear Mr. Robertus:

This firm represents the San Elijo Joint Powers Authority ("SEJPA"). I write to express SEJPA's concerns regarding the above-referenced Tentative Order. While SEJPA has identified both procedural and technical infirmities in the Tentative Order, it is our belief that these infirmities can be remedied through the addition of a simple provision requiring the City of Escondido to enter into a Discharge Scheduling Agreement with SEJPA prior to the discharge of brine from the Industrial Brine Collection System ("IBCS") facility, in which case SEJPA can support the Tentative Order, otherwise, SEJPA will be forced to object to the issuance of the Tentative Order on both procedural and substantive grounds.

BACKGROUND

By way of background, SEJPA operates the San Elijo Ocean Outfall ("SEOO") and the San Elijo Water Reclamation Facility ("SEWRF"). The NPDES operating permit ("Permit") for the SEWRF and the SEOO was renewed by the San Diego Regional Water Quality Control Board ("Board") at the Board's July 8, 2005 meeting. A copy of the permit is attached hereto as Exhibit 1. At the same meeting the Board renewed the operating permit for the City of Escondido's Hale Avenue Resource Recovery Facility ("HARRF"). That permit is attached hereto as Exhibit 2.

As you know, the SEWRF reclaims and reuses approximately 350,000,000 gallons of waste water from the HARRF each year and puts that water to beneficial uses, including basin recharge. If the SEWRF is unable to reclaim the HARRF waste water because it has been commingled with the

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ICBS brine stream, 350,000,000 gallons of reclaimable water will be discharged to the sea in contravention of the California constitution and the Water Quality Control Plan for the San Diego Basin ("Basin Plan").

In agreeing to the conditions set forth in SEJPA's renewed Permit, SEJPA was lead to believe that the chemical characteristics of the treated water being discharged from the HARRF would remain the same. More specifically, that the concentration of the total dissolved solids or other pollutants of concern would not increase to the point where the treated water discharged to the Escondido Land Outfall ("ELO") would no longer be available for reclamation by SEJPA. SEJPA raised this concern on several occasions with Board staff as well as the City of Escondido.

The Tentative Order appears to totally ignore this concern. There are no findings concerning the change in chemical composition of the treated water as a result of its mixture with the discharged brine from the IBCS. There is no requirement that the City of Escondido segregate the IBCS brine from the HARRF treated water in order to assure that the HARRF water can continue to be available for both reclamation and reuse. In fact, the permit boldly states that these two streams will be commingled. As described in greater detail below without provisions to assure that the HARRF water can continue to be reclaimed and reused, this permit violates the Basin Plan and cannot be approved.

NOTICE

Page 9 of the Tentative Order provides at that "this Regional Board has notified the City and interested agencies and persons of its intent to prescribe waste discharge requirements for the discharge and has provided them with an opportunity to submit their written comments and recommendations. In fact, SEJPA met with both Board staff and the City on several occasions. In each of these meetings SEJPA affirmatively indicated that they considered themselves an interested party and wished to be apprised of any proposed actions regarding the issuance of a permit. Both the City of Escondido and Board staff assured SEJPA that it would be "kept in the loop". Moreover, Board staff admitted that SEJPA is an interested party when the Tentative Order prepared by Board staff declared on page 5 of that "wastewater shall be discharged to the Pacific Ocean,... via... the San Elijo Ocean Outfall." It was only by chance that SEJPA became aware that the proposed permit would be considered at the Board's September meeting even though SEJPA had complied with the requirements to receive notice by mail as more fully described in the Tentative Order fact sheet at page F-38.

Issuance of an order prescribing waste discharge requirements is an adjudicatory act requiring notice and opportunity for interest parties to be heard. (See California Water Code § 13263 and 22CCR 648-648.8.) Staff's inadvertent violation of SEJPA's procedural due process rights requires that any consideration of this draft order be postponed until Tentative Order can be properly noticed. However, SEJPA will consider waiving its due process rights provided that the draft order is amended to require the City to segregate treated water and brine discharges if it is determined that their commingling causes the water to be unacceptable for reclamation purposes.

CEQA

You state in finding E of the Tentative Order that "the Regional Water Board has considered the environmental impact report (EIR)", and that "the City filed a Notice of Determination on February 27, 2003." Inexplicably, your finding fails to describe that EIR by project name or State Clearinghouse number. We believe that the EIR you reviewed may not cover this project as now described in the tentative order, or may not adequately address the discharges at issue in the requested permit. We have searched State Clearinghouse's CEQA filings database, and there was no NOD filed on or about "February 27, 2003" concerning any project that appears related to this permit. However, we note that the City prepared a supplemental EIR for its Recycled Water Quality Enhancement Project on or about November 7, 2002 relating to brine collection pipelines, but that SEIR could not have addressed environmental impacts posed by the PEP, because the California Energy Commission's NOD for the PEP's was not issued until August 6, 2003. We note that the project description filed with the State Clearinghouse for the PEP describes it as operating with "evaporative air inlet coolers," i.e. without cooling water discharges. So, based upon the public information available from the Governor's Office of Planning and Research, there does not appear to be a CEQA document addressing this discharge as described in the Tentative Order. Please provide a copy of the NOD and EIR you relied upon for your finding E of the Tentative Order so that we may fully review the adequacy of your finding and perhaps retract our objection. Consider this a Public Records Act request for those documents.

BASIN PLAN

Finding H of the draft order states that "requirements of this order specifically implement the applicable water quality control plans". In fact, as written, this draft order is in direct conflict with the Basin Plan. More specifically, the Basin Plan incorporates by reference State Water Resources Control Board Resolution No. 77-1, Policy with Respect to Water Reclamation in California ("Policy"), a copy of which is attached hereto as Exhibit 3.

The Policy makes specific reference to the California constitution which provides that water resources of the State be put to beneficial use to the fullest extent of which they are capable, and that waste or unreasonable use or unreasonable method of use of water be prevented, and that conservation of such waters is to be exercised with a view to reasonable and beneficial use thereof in the interest of the people and for the public welfare. By commingling the treated water from the HARRF with the brine stream from IBCS, this Tentative Order may stand in direct contravention of the California constitution if it is determined that such commingling impairs the use of these waters for reclamation purposes. However, there is no finding within the Tentative Order which considers this crucial issue.

Resolution 77-1 goes on to adopt the principle that Regional Boards shall encourage water reclamation projects that will cause waste waters that would otherwise be discharged to marine receiving waters to be applied for beneficial use. If the commingling of the IBCS brine water and the HARRF treated water causes the HARRF water to be unsatisfactory for reclamation purposes, this Tentative Order will stand in direct contravention of the policy and in turn the Basin Plan. However, neither the Tentative Order nor its attachments address this issue.

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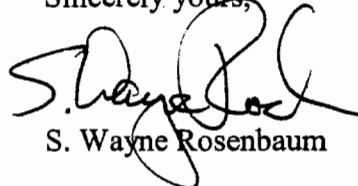
SEJPA requests that the Tentative Order be amended to require, prior to discharge of any brine, that the City of Escondido prepare an analysis reasonably satisfactory to the Executive Officer of the Regional Water Quality Control Board demonstrating that the commingling of the treated water and the brine water will not impair the use of the treated water for the beneficial use through reclamation, thereby violating the Basin Plan. Alternatively, SEJPA requests that the order be amended to require the City of Escondido to enter into a binding Discharge Scheduling Agreement with SEJPA by which the IBCS brine will be segregated from the HARRF treated water such that the brine can be discharged to the SEOO and the treated water can be reclaimed at the SEWRF.

CONCLUSIONS

SEJPA wishes to work cooperatively with the City and the Board. However, where beneficial uses of water may be impaired, SEJPA insists upon its procedural due process rights and full compliance with the Basin Plan. SEJPA has proposed reasonable conditions for inclusion in the draft order which address these concerns. SEJPA requests that the Board either incorporate these conditions into the Tentative Order or, in the alternative, remove this item from the RWQCB September agenda and provide adequate notice to all interested parties.

Thank you for your consideration of this matter. We look forward to discussing the issues with you at your earliest convenience.

Sincerely yours,



S. Wayne Rosenbaum

Enclosures

cc: Michael P. McCann
Patrick A. Thomas
Paul J. Richter
Joan Heredia
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